

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT L. DYKES,

Plaintiff,

Case No. 1:18-cv-669

v.

THOMAS FINCO, et al.,

HON. JANET T. NEFF

Defendants.

/

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. Plaintiff filed a motion for a preliminary injunction, seeking to have this Court “approve me for the vegan meal” or, in the alternative, a “menu that comports to my sincere[ly] held beliefs” (ECF No. 9 at PageID.56). The matter was referred to the Magistrate Judge, who issued a Report and Recommendation (R&R), recommending the motion be denied. The matter is presently before the Court on Plaintiff’s objections to the Report and Recommendation. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.

In his objections, Plaintiff first asserts that the Magistrate Judge misconstrued his request inasmuch as the Magistrate Judge referenced only his alternative request for a “separate menu” and did not reference his request for a “vegan meal” (Pl. Obj., ECF No. 13 at PageID.69-70). However, Plaintiff does not explain, and the Court does not discern, how the characterization of

his request would change either the Magistrate Judge’s analysis or ultimate conclusion. Therefore, Plaintiff’s first objection is denied.

Next, Plaintiff objects to the “Magistrate’s misinterpretation of the standards for approval of a preliminary injunction order expressed in case law, or the Magistrate’s assertion of a standard not required” (Pl. Obj., ECF No. 13 at PageID.70). Specifically, Plaintiff objects to the Magistrate Judge’s requirement that Plaintiff show the absence of an adequate legal remedy (Pl. Obj., ECF No. 13 at PageID.70; R&R, ECF No. 12 at PageID.67). Plaintiff’s objection fails to demonstrate any legal error in the Magistrate Judge’s analysis. Although not an enumerated factor, whether a plaintiff is being threatened “by some injury for which he has no adequate legal remedy” is the “main prerequisite to obtaining injunctive relief.” *Dana Corp. v. Celotex Asbestos Settlement Tr.*, 251 F.3d 1107, 1118 (6th Cir. 2001) (quoting 11A Charles Alan Wright et al., FED. PRACTICE & PROCEDURE, § 2942 (2d ed. 1995)). Therefore, Plaintiff’s second objection is denied.

Last, Plaintiff argues that the Magistrate Judge improperly determined that he is unlikely to prevail on the merits of his underlying claim and that he has not shown that he will suffer irreparable injury absent injunctive relief (Pl. Obj., ECF No. 13 at PageID.71-72). While Plaintiff disagrees with how the Magistrate Judge weighed these two factors, he has not demonstrated any factual or legal error in her analysis. The Magistrate Judge properly considered the applicable legal standards for injunctive relief and the record presented and properly concluded that Plaintiff was not entitled to the requested injunctive relief. Therefore, Plaintiff’s third and fourth and objections are also denied.

Accordingly, this Court adopts the Magistrate Judge’s Report and Recommendation as the Opinion of this Court. Because this action was filed *in forma pauperis*, this Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal of this decision would not be taken in good

faith. *See McGore v. Wrigglesworth*, 114 F.3d 601, 610 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211-12 (2007). Therefore:

IT IS HEREBY ORDERED that the Objections (ECF No. 13) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 12) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that Plaintiff's motion for preliminary injunction (ECF No. 9) is DENIED.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: February 21, 2019

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge